

1
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5900 OF 2006

Narayan Yashwant Datkhile. .. Petitioner.

vs.

Ramesh Janardan Ghogare. .. Respondent.

Mr. Namrata Waghole for petitioner.

CORAM : A.P. DESHPANDE, J.

DATE : 18th December, 2006.

P.C.

. The plaintiff instituted a suit in the year 1995 and when the same was fixed on 15.1.1997 the petitioner and his client were absent and hence for want of taking appropriate steps the same was dismissed in default. For a period of six years thereafter the plaintiff did not take any steps and in the last week of October 2003 moved an application for setting aside the order of dismissal of the suit and for its restoration. As there was a delay in filing the application for restoration of the suit, condonation of delay application was filed. The said application was opposed by the other side. The petitioner/plaintiff led evidence

and after considering the evidence, the trial court has passed the impugned order which is challenged in the instant petition, rejecting the application moved by the petitioner seeking condonation of delay.

2. In the first place the trial court found that the reason spelt out in the application was that because of festival of Makar Sankrant he could not attend the Court on 15.1.1997. There is no explanation for the delay caused in filing the application. The petitioner has tried to blame the advocate for not attending the matter. However, the trial court has concluded total lack of diligent on the part of the petitioner in getting in touch with the counsel for the period of six years. An altogether new case was sought to be made out when the evidence was led and the same is to the effect that as the parties were discussing a possible settlement the petitioner did not attend the matter. The learned counsel for the petitioner submits that on account of the fault of the counsel the client should not be made to suffer. The petitioner has failed to establish that the counsel was at fault. The petitioner has not bothered to contact the counsel for the period of six years and hence the negligence and want of diligence is on the part of the petitioner. Hence, the said submission cannot be entertained. In this fact situation, the trial

3

court has held that the applicant has failed to show sufficient cause for condonation of delay.

3. Perused the order. No interference is called for. Hence, the petition is summarily dismissed.

(A.P. Deshpande, J.)